Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Joint Petition For Expedited Rulemaking	)	CI Docket No. 02-22
Establishing Minimum Notice Requirements	)	
For Detariffed Services	)	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

INTRODUCTION

On October 29, 2001, the National Association of State Utility Consumer Advocates ("NASUCA"), along with eight other petitioners,[1] filed a joint petition for expedited rulemaking ("Joint Petition.") The Joint Petition sought the issuance of a notice of proposed rulemaking seeking comment on whether the Commission should require interexchange carriers ("IXCs") to give at least 30 days advance written notice to subscribers prior to making any material changes to their rates, terms, or conditions.

Pursuant to the Commission's Public Notice of February 6, 2002, a number of parties filed comments related to the issues raised by the Joint Petition on or about March 11, 2002. Also in accordance with the schedule set by the Public Notice, NASUCA herein files its response to arguments contained in those comments. Due to the number of comments filed and the relatively short time frame for responding, NASUCA will address only the most significant of the arguments raised in comments. Failure to

[1] The other petitioners were AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Utility Commissioners, the National Association of Consumer Agency Administrators, and the National Consumers League.

address any particular argument raised in comments should not be construed as acquiescence in that argument.

THE REQUESTED RULE IS NEEDED

NASUCA was pleased to note that many commenters supported (or did not oppose) the request that the Commission initiate a rulemaking proceeding to establish minimum notice requirements for detariffed services.[2] Nevertheless, several commenters denied that there is any need for a rulemaking. These commenters raise several different arguments. Some claim that the market for interstate interexchange service is sufficiently competitive that market forces alone will provide the degree of notice that customers demand.[3] Others argue that other remedies exist, such as the right to bring a complaint to the Commission pursuant to section 208, and that a rulemaking on this topic is therefore unnecessary. Still other commenters claim that at least some IXCs already provide prior notice of significant changes, and that the proposed rule is therefore, in effect, a solution in search of a problem. None of these arguments can withstand scrutiny.

The interexchange market is not a perfectly competitive one. Even if it were, competition only works to produce the desired results – lower prices, higher quality, increased innovation – if consumers have timely access to relevant information about different providers. If carriers have the ability to increase prices without informing their

[2] Sprint Communications Company L.P. ("Sprint") at 1; Qwest Communications International Inc. ("Qwest") at 1; Alabama Public Service Commission ("Alabama") at 1; Competitive Telecommunications Association ("CompTel") at 2-4; AT&T Corp. ("AT&T") at 1; WorldCom, Inc. ("WorldCom") at 1.
[3] Association of Communications Enterprises ("ASCENT") at 9; Verizon at 2; NCTC Long Distance, Clarks Long Distance and NNTC Long Distance ("Nebraska IXCs") at 2-5.

customers, the market will be prevented from working efficiently because customers will be making purchasing decisions based on outdated, inaccurate information. Unlike traditional price regulation, a requirement that customers be given accurate information in a timely manner does not interfere with competition, but actually facilitates it.

It should also be noted that market forces do not work immediately. If the market is efficient and effective, and consumers demand advance notice of material changes in rates and terms and conditions of service, providers which fail to provide such notice may eventually be forced either to change their practices or exit the market. That process, however, will unfold over some period of time, perhaps a lengthy one, and during that time large numbers of consumers will lose significant amounts of money from rate increases which occur without notice. The requested rule is needed to prevent this undeserved transfer of wealth.

The opponents of the proposed rule next argue that the Section 208 Complaint Process provides a sufficient remedy in case any carrier or carrier provides insufficient notice.[4] A single complaint, however, will not provide a uniform national requirement applicable to all carriers providing interstate interexchange service. Indeed, a single complaint may not even produce a requirement applicable to all customers of the carrier named in the complaint.

As a final argument against the need for any notice requirement at all, several carriers filed comments claiming that they individually, or carriers generally, already provide notice to customers of certain types of changes. These claims, however, fall far

[4] Verizon at 4; SBC Communications, Inc. ("SBC") at 5; ASCENT at 11.

short of demonstrating a lack of need for individual, 30 day advance written notice to customers. For instance, several carriers who claim to give notice refer to the fact that they post rate changes on their websites.[5] As pointed out in the Joint Petition, however, such notice is effective only for a customer who has internet access and visits his carrier's website before placing each interexchange call. Joint Petition at 6. Of all commenting carriers, only WorldCom claims to give advance notice to each individual customer, and WorldCom nonetheless does not oppose the initiation of a rulemaking proceeding. WorldCom at 1.

SPECIFIC ISSUES RAISED BY THE PETITION

In addition to challenging the need for the requested rule, commenters who criticize the Joint Petition generally focus on two areas.[6] First, some commenters argue that any notice requirement should be applicable only to certain customers, changes or services. Second, some comments address the manner in which notice should be given, or the length of time by which notice should precede the effective date of any material change. NASUCA will address these matters in turn.

A number of commenters address the services to which the notice requirement should apply. WorldCom, for instance, believes notice should be required only for domestic 1+ dialing. Worldcom at 4. Similar sentiments are voiced by CompTel at 4.

[5] Verizon at 3; Qwest at 3; Americatel Corporation ("Americatel") at fourth page numbered "2."
[6] Some commentors have raised the issue of whether any FCC rule should pre-empt the states. NASUCA believes that it is premature to raise that issue now. Preemption should be addressed in the rulemaking.

AT&T agrees, and adds that only presubscribed customers should be entitled to notice. AT&T at 3-4.

APPLICABILITY OF THE NOTICE REQUIREMENT

NASUCA agrees that the notice requirement may be limited to domestic calling, and to presubscribed customers. NASUCA does not agree, however, that only 1+ dialing should be covered. Many customers use operator services, and may choose a long distance carrier based on the convenience, price and/or quality of service provided by a particular carrier's operators. These customers need accurate and timely price information so that the market for operator services may work as efficiently as that for direct dialing.

Additionally, some commenters addressed which customers should be entitled to notice. WorldCom (at 4) and CompTel (at 2) opine that any requirement should apply only to residential customers. A better suggestion comes from Qwest, which suggests (at 8-9) that a notice requirement should apply only to mass market customers, which it defines as customers who do not individually negotiate the terms of their contracts for interexchange service. NASUCA agrees that the limitation suggested by Qwest would be sufficient to protect customers who do not individually have the power to demand notice requirements tailored to their needs.

Commenters also address the Joint Petition's proposal that notice be required for "material changes in rates, terms or conditions." Objections are raised concerning the lack of specificity of the word "material," for example. Nebraska IXCs and WorldCom suggest that only rate increases should trigger a requirement to give notice. Nebraska

IXCs at 6-7; WorldCom at 5. Qwest would add changes in rate structure as a triggering event, while IDT Corporation ("IDT") suggests any increase in customer obligations. Qwest at 8; IDT at 5.

NASUCA does not deny that "material change" lacks scientific precision. It is not possible, however, to predict in advance all the ways in which carriers might seek to change the terms and conditions of the service they provide. NASUCA agrees with a number of commenters who argue that rate decreases should not require 30 days advance written notice before they take effect. Beyond that, NASUCA suggests that the Commission, in its NOPR, consider seeking further comment on whether additional items other than rate decreases can appropriately be implemented without triggering the advance notice requirement.

NOTICE SHOULD BE IN WRITING, AND SHOULD BE GIVEN 30 DAYS IN ADVANCE

The last issue which drew significant comment concerned the particularities of the notice which should be required. The Joint Petition suggested that notice be given 30 days in advance, and that notice should be by letter, postcard, or bill insert. Certain commenters objected to both the time frame and the form of notice.

A number of carriers suggested shorter time frames, ranging from 5 days (Sprint at 6-7) to 15 days (AT&T at 5; WorldCom at 4). However, given the existence of a relatively large number of carriers to choose from, obtaining information about the prices and services offered by each will take some time. Indeed, it must be kept in mind that the time period must be sufficient for the customer to receive the notice, gather information about different providers' terms and conditions of service, make a decision as to which

provider would best meet the customer's needs, and then permit the customer's local exchange carrier to process the change request. Especially if coupled with the request by Qwest (at 9) that notice should be deemed given on the day it is sent, 30 days is certainly not excessive. Indeed, even some of the parties opposing 30 day notice admit that such a requirement would benefit customers. ASCENT at 7. Moreover, Maine already requires 25 days advance notice for rate increases,[7] and no reason has been advanced for providing a lesser degree of protection to citizens of other states, or for concluding that five additional days would significantly damage the interests of interstate carriers. Additionally, a recent poll of Ohio consumers done by the University of Cincinnati for the Ohio Consumers' Counsel indicated that more than 90 percent would prefer at least 30 days advance notice of rate increases for optional phone services.[8]

Finally, some commenters suggest that carriers be permitted to give notice using means other than letters, postcards, or bill inserts. Some of these suggestions have merit. For instance, NASUCA agrees that carriers should be permitted to give notice by email to customers who have chosen to be billed electronically. AT&T at 6; Qwest at 9. NASUCA also agrees that a bill message could be acceptable, as long as its placement and type size do not render the message difficult to read or understand. Nebraska IXCs at 7-8; AT&T at 6-7. However, some of the other suggestions would render the notice requirement null. NASUCA thus opposes permitting notice by website posting,[9] newspaper publication,[10] or press release.[11] NASUCA also opposes permitting notice by

[7] Me. Rev. Stat. Tit. 35-A, section 7307(1)(B).
[8] See Attachment 1.
[9] IDT at 6; Sprint at 3-4; Americatel at eleventh page numbered "2".
[10] Nebraska IXCs at 8.
[11] *Id*.

phone call,[12] for two reasons. First, this would not provide a record of the specific wording in which the notice was given, thus presenting a significant danger of "he said, she said" arguments where there is a dispute over whether notice was actually provided. Second, a phone call may result in notice being given to a child, babysitter, workman, or visitor, rather than to the actual customer. For these reasons, the telephone is not an appropriate tool for giving notice of material changes to the rates, terms and conditions of interexchange service.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the Joint Petition, the Commission should grant the petition, initiate an expedited rulemaking docket, and issue the rule as requested in the Joint Petition and explained in these Reply Comments.

Respectfully submitted,

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[12] WorldCom at 7; IDT at 6; CompTel at 6.

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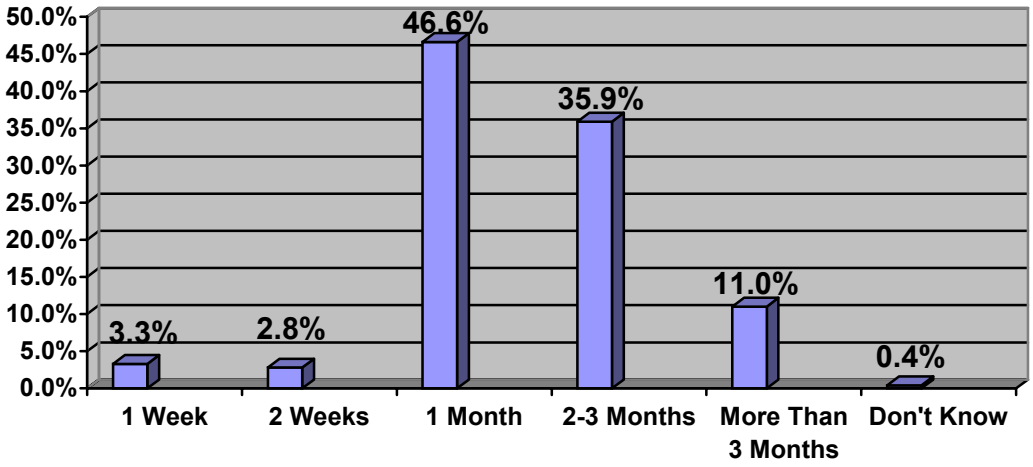
Attachment 1

Figure 15

"Thinking about optional phone services on your home phone . . . how much advance notice would you like to have before a telephone company increased your rates on the optional service?"

(Asked only of households who subscribe to optional phone services.)



(Question 15)

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Institute for Policy Research
University of Cincinnati